

DEPARTMENT OF FISH AND GAME

REGION 2
1701 NIMBUS ROAD, SUITE A
RANCHO CORDOVA, CALIFORNIA 95670
Telephone (916) 358-2900



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MEMORANDUM OF UNDERSTANDING
between

THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 3
and
CALIFORNIA DEPARTMENT OF FISH AND GAME
SACRAMENTO VALLEY CENTRAL SIERRA REGION
regarding

ROUTINE MAINTENANCE ACTIVITIES IN UNIMPROVED and IMPROVED
CHANNELS

This Memorandum of Understanding (MOU) by and between the California Department of Fish and Game, Sacramento Valley & Central Sierra, Region 2, hereinafter called the "Department", and the California Department of Transportation District 3, hereinafter called the "CALTRANS", is for the purpose of delineating and defining maintenance activities in unimproved natural channels and improved channels and shall not require further notice and agreement in compliance with Section 1601 of the Fish and Game Code, except as otherwise noted in this MOU.

WHEREAS, Section 1601 of the Fish and Game Code allows the Department to propose reasonable modifications to certain CALTRANS construction projects as would allow for the protection and continuance of existing fish and wildlife resources that may be adversely affected by that construction project; and,

WHEREAS, with regard to any project that involves maintenance and operation of water flow, drainage or flood control, notice to, and agreement with, the Department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is changed or conditions affecting fish and wildlife resources change, and the resources are to be adversely affected by the activity conducted under the agreement; and,

WHEREAS, it is essential that the CALTRANS perform maintenance activities within improved channels to maintain the designed capacity of the channel(s), to protect the CALTRANS's investment, to prevent loss of life and property; and

WHEREAS, consistent with the policies of California Fish and Game Code Section 1600 et seq., the protection and conservation of the fish and wildlife resources of California are of utmost public interest, and fish and wildlife conservation is a proper responsibility of the State; and

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WHEREAS, in order to avoid future conflicts, it is mutually beneficial to delineate and define maintenance, to establish procedures to expedite maintenance activities, and to provide for the protection and continuance of the existing fish or wildlife resources during such maintenance activities; and

WHEREAS, nothing in this agreement shall constitute a waiver of any future or current Department claims to the use and maintenance of natural conditions under the public trust doctrine; and

WHEREAS, nothing in this agreement shall constitute a waiver of the CALTRANS's claimed rights to maintain and operate the state highways without a 1601 agreement; and

WHEREAS, this MOU is not intended to affect the CALTRANS's rights under Fish and Game Section 1601 (f) to undertake emergency work necessary to protect life or property.

NOW THEREFORE, the Department and the CALTRANS agree as follows:

I. DEFINITIONS

The following definitions shall govern this MOU:

Unimproved channel - An unimproved channel is defined as a channel of a stream or river in which significant man-made alterations and/or improvements have not occurred.

Improved channel - An improved channel is defined as the channel of a stream or river in which significant man-made alterations have occurred to improve the passage of flood flows, including straightening the channel or containing the flows within constructed banks and concrete-lined, riprapped, or earth channels with modified banks.

Channel banks, channel bottoms, low flow channels and other appurtenant features of unimproved channels are defined by the illustrations shown on Exhibits 2 and 3.

Maintenance activities - Maintenance activities in improved and unimproved channels are defined as the removal/displacement of sand, silt, sediment, debris, rubbish, woody or aquatic vegetation and other obstructions to flow; the control of weeds, grasses, and emergent vegetation; and the cleaning, clearing and repair of erosion control facilities as authorized in this MOU.

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II. AUTHORIZED ACTIVITIES

The maintenance activities identified below, when performed on the unimproved or improved channel(s) and work area(s) and in accordance with the procedures described below, shall not require further notice to, or agreement with, the Department, except as noted in Section V. NOTIFICATION REQUIREMENTS.

A. Debris or Obstruction Removal

1. Culverts, bridge structures or channels may be cleared of debris, trash, rubbish, flood-deposited woody and herbaceous vegetation, fallen trees, dead trees which are in clear danger of falling in the channel, branches, and associated debris which significantly reduce channel capacity. Clearing may be performed with either hand tools, equipment operated from above the bank or from waterborne equipment, i.e., equipment working from a floating platform.
2. Where vegetated watercourses cause a line - of - sight problem for driveways/roadways entering a state highway, that vegetation causing the problem shall be pruned to the point where the obstructed view has been relieved.
3. All cleared vegetation and debris shall be removed from the stream corridor and placed or secured where they can not reenter state waters.

B. Silt, Sand, or Sediment Removal

1. Removal of silt, sand, or sediment within the immediate vicinity of man-made facilities or structure(s) which cause obstruction to flow is authorized. Work within the channel shall not exceed more than 100 linear feet, upstream and downstream of the facility.
2. Measures to minimize turbidity/siltation shall be taken into account during project planning and implementation. Project work shall be limited to periods when there is low stream flow. Unless otherwise agreed, should stream flow exist, the stream flow shall be diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses. Any temporary dam or other artificial obstruction constructed shall only be built from materials such as sandbags, gabions, clean gravel or other materials which will cause little or no siltation. When any dam or other artificial barrier is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam. All remnants of any such dam or barrier shall be removed upon completion of work unless specifically authorized, in writing, by the Department. Prior to commencing activities in areas where fish are known to be present or may be present due to seasonal migration, CALTRANS shall notify the Department of such activity. Appropriate mitigation measures will be supplied by the Department prior to initiation of activities.

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3. Where removal of accumulated sand, silt, sediment, and other obstructions to maintain channel capacity exceed 100 linear feet upstream and downstream of the facility, CALTRANS shall submit separate plans detailing the project. Channels should be cleared in such a manner that trees greater than three (3) inches DBH (diameter at breast height) are avoided or are trimmed as is necessary to gain access. In channels where small trees are contiguous on both sides of the watercourse, thinning of trees may be authorized to permit access. Removal of all vegetation from more than 40 linear feet of the streambank is not authorized. Unless agreed otherwise, any work area left barren of vegetation as a result of the maintenance activities shall be restored to its natural state by seeding with native seeds, or other agreed upon means with native species of trees, shrubs, and grasses, within thirty (30) days of work completion, or by October 15 of the year the activity occurred.

C. Vegetation Control

1. The limits of control of aquatic vegetation and woody growth to remove obstructions to normal flow in the channel bottom from toe of slope to toe of slope, is shown on Exhibit 4. CALTRANS may remove/prune the lower branches of woody growth, less than three (3) inches DBH, growing on the lower stream banks from ground level to a distance of 6 feet above ground level. Where appropriate, removal of non-native vegetation (giant reed grass, Arundo, tree tobacco, castor bean, pampas grass, eucalyptus, acacia, etc.), including stump and root removal from top of bank to top of bank, as shown on exhibit 5, is authorized. Removal methods shall not result in the loss of bank or channel integrity.

2. The methods of control of aquatic vegetation and woody growth of less than three (3) inches DBH which restricts flow, may be accomplished by the use of mechanical devices, chemicals that are not deleterious to aquatic life, or hand labor.

3. Trees greater than three (3) inches DBH shall not be removed without prior approval from the Department. Vegetation control not identified in Exhibit 1, is limited to 40 linear feet upstream and downstream of watercourse crossings.

D. Repair of Previous Erosion Control Work

1. Erosion control work includes the repair of failed rock, sacked concrete, gabions, riprap or other such devices. Maintenance activities shall be confined to the failed section and immediately adjacent areas (not to exceed twenty (20) feet) affected by the failure. Repair shall be done "in kind", such that gabions are replaced with gabions of the same size, etc., except as otherwise authorized in the MOU.

2. Any proposed changes to facilities, such as an unimproved channel to riprap, riprap to gabions, etc., shall be cause for CALTRANS to renotify the Department pursuant to Fish and Game Code, Section 1601 and, when applicable, comply with the California Environmental Quality Act. When repairing facilities that are constructed of petroleum products (i.e. asphalt), repairs shall not be made with petroleum products that are deleterious to aquatic life.

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3. Asphalt or materials containing asphalt and/or other petroleum products are specifically prohibited from use or being placed where they may be subjected to flowing waters.

E. Repairs to Existing Facilities

1. Repairs may be made as necessary to existing facilities provided no equipment shall be operated from within flowing water and channel bank integrity is not compromised. All work shall be done in dry conditions, unless authorized by the Department pursuant to Notification pursuant to Exhibit 1..
2. Minor sandblasting, painting, chipping and gunniting may be performed as necessary provided that paint, rebound and related material are contained and do not enter state waters. Chipped paint and rebound materials shall be removed and disposed of where they shall not reenter state waters.

F. Storm/Flood Damage Repair

1. If storm or flood damage occurs to facilities, CALTRANS may operate under the emergency clause of Fish and Game Code Section 1601 (f) and notify the Department within 14 days of the start of emergency work. It is highly recommended that CALTRANS notify the Department as soon as possible regarding such emergency operations so that the Department can provide CALTRANS with appropriate mitigation measures. Appropriate mitigation measures would include those deemed necessary by the Department to protect fish and wildlife resources and/or water quality.
2. The Department recognizes that during emergencies that involve the clearing of blocked roadways, it is necessary to reopen roads as soon as possible for emergency traffic. Where road blockages are adjacent to watercourses, road crews have typically pushed slide material over the road side into the watercourse. It is recommended that this practice be eliminated. Placement of spoils into watercourses may cause significant adverse impacts to the state's resources and be in direct conflict with established laws. All spoils shall be placed in areas where flowing waters can not carry the material into state waters. Temporary storage areas shall be fortified/bermed or covered up so that sheet flow or rainfall will not carry sediments into state waters.

G. Minor Erosion Control Work

1. The reworking of the bank slopes, that have been degraded by erosional forces, through the resloping, the installation of rock, gabions, or other erosion control measures is authorized. As shown in Exhibits 6 and 7, work shall be limited from the toe of slope to the top of the bank. The length of the project work shall not exceed forty (40) linear feet of bank length.
2. Project work shall be limited to periods when there is little or no stream flow unless the proposed work is to be done above the water surface elevation. If it is necessary to work within flowing water, unless otherwise agreed, the stream flow shall be diverted using gravity flow through temporary culverts/pipes or

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pumped around the work site with the use of hoses. Any temporary dam or other artificial barrier constructed shall only be built from materials such as sandbags or clean gravel which will cause little or no siltation. When any dam or other artificial barrier is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam. Project work shall be performed in a manner that minimizes stream turbidity. Prior to commencing activities in areas where fish are known to be present or may be present due to seasonal migration, CALTRANS shall notify the Department of such activity.

3. Removal of vegetation shall be minimized. Trees greater than three (3) inches DBH shall not be removed without consultation with the Department. To the extent possible, the stream channel shall be returned to its natural state and without creating a possible future bank erosion problem.
4. Upon project completion, the stream channel bottom shall be scarified from the work site to the equipment entrance, where activities have caused compaction of the streambed soil material. Unless agreed otherwise, any work area left barren of vegetation as a result of the maintenance activities shall be restored to its natural state by seeding, or other agreed upon means with native species of trees, shrubs, and grasses, within thirty (30) days or by October 15th of the year the activity occurred.

III. TIME AND MANNER OF MAINTENANCE ACTIVITIES

1. Maintenance activities shall be performed at a time and in a manner so that the proposed maintenance activities minimize adverse impacts and provide for the protection and continuance of the fish and wildlife. Periods of implementation of maintenance activities, unless otherwise agreed to in writing are July 1 through October 15 for activities not including removal/alteration of vegetation. For those projects that will impact avifauna nesting activities, the operating period shall be September 1 through March 1 unless otherwise agreed to in writing. If any wildlife is encountered during the course of routine maintenance, said wildlife shall be allowed to leave the maintenance area unharmed, and shall be flushed, hazed, or herded in a safe direction away from the project site. If wildlife does not leave the project area, the Department shall be notified and recommend appropriate mitigation measures.

IV. GENERAL CONDITIONS

1. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Operator to insure their compliance.
2. No servicing/maintenance of, or fueling equipment shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow regime.

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3. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. No rubbish shall be deposited within 150 feet of the high water mark of any watercourse or lake.

V. NOTIFICATION REQUIREMENTS

For any projects outside the scope of this MOU, the CALTRANS shall provide written NOTIFICATION (FG Form 2023) and proof that the project has been reviewed pursuant to the California Environmental Quality Act, to the Department's Sacramento Valley Central Sierra Region office at 1701 Nimbus Road, Rancho Cordova, CA 95670. For maintenance activities not previously identified in the MOU, CALTRANS shall notify the Department on the form identified as "Exhibit 1". The written report shall include the following information: Location (i.e. address, map coordinates and/or drawing), problem description, proposed solution, equipment to be used, and the scheduled date of proposed activity. The CALTRANS shall provide the Department written notice, USING EXHIBIT #1, of all such activities, including activities undertaken as part of this MOU and those not previously identified, at least 14 days prior to commencement of the work. The Department shall provide a written review and appropriate mitigation measures, if necessary, prior to commencement of activities.

VI. FEES

CALTRANS shall submit a renewal fee for this MOU in the amount of \$750.00 to the Department within 15 days of acceptance of this MOU. On or before the one year anniversary date of this MOU, the CALTRANS shall submit a renewal fee in the amount of \$750.00.

VII. AMENDMENT AND TERMINATION

This MOU cannot be amended or modified in any way except by a written agreement duly executed by the Department and CALTRANS. Any proposal for amendment or modifications must be delivered for review and approval by the Regional Manager or a Department representative designated by the Regional Manager.

This MOU becomes effective on the date of the Department's signature and receipt of the fee agreed to in Section VI. of this MOU. This MOU may be terminated by either party. Said termination shall become effective one (1) month after the party not initiating the termination has been duly notified in writing.

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VIII. ENTIRE AGREEMENT

This MOU, along with the exhibits attached hereto (Exhibits 1 thru 7), constitutes the entire Agreement and understanding between the Department and the CALTRANS for maintenance activities. This Agreement supersedes all prior and contemporaneous routine activity agreements, representation, understanding, if any, whether oral or written.

A copy of this MOU shall be present at the work site. The MOU shall be presented to any Department of Fish and Game employee inspecting the stream maintenance activity.

IX. OTHER ENVIRONMENTAL LAWS, STATUTES, OR REGULATIONS

This MOU does not constitute any form of authorization, permit, biological opinion, or compliance with the requirements and provisions of any other statute, regulation, requirement, or ordinance respecting the protection or conservation of fish and wildlife resources. Those statutes include, but are not limited to, the California Environmental Quality Act, the California Endangered Species Act, or the Federal Endangered Species Act.

X. Upon signing this MOU the Department and CALTRANS recognize the fact that this MOU replaces/ supersedes all other maintenance agreements and MOUs that are currently in existence between the Department and CALTRANS, District 3.

XI. This MEMORANDUM OF UNDERSTANDING terminates one(1) year from the date of the Department's signature. It is the intent of this MOU to provide for a long term cooperative Agreement between the Department and CALTRANS.

CONCURRENCE

California Department of
Transportation, District 3

California Department of
Fish and Game

(TPW) James P. Wood 9-27-00
(signature) (date)
for Irene Itamura
DISTRICT 3 DIRECTOR
(title)

David P. Duke 9-18-00
(signature) (date)
Environmental Specialist III
(title)

DEPARTMENT OF FISH AND GAME

REGION 2
1701 HIMBUS ROAD, SUITE A
PACHO CORDOVA, CALIFORNIA 95670
Telephone (916) 358-2900



EXHIBIT 1

PROPOSED MAINTENANCE ACTIVITY

____ Activity Covered Under MOU

____ Activity Not Currently Covered Under MOU

To: California Department of Fish and Game
Sacramento Valley Central Sierra Region Fax # (916) 358-2912

Attn: _____

From: California Department of Transportation, District 3

Date: _____

Contact Person: _____

Phone Number: _____ Fax Number _____

Location: Section __, Township __, Range __

Nearest Town/City: _____

Problem: _____

Solution: _____

Equipment to be Used: _____

Proposed Work Period: _____

**ACKNOWLEDGMENT TO THIS NOTICE BY THE DEPARTMENT OF FISH AND GAME IS
NOT REQUIRED TO COMMENCE EMERGENCY WORK TO PROTECT LIFE OR
PROPERTY**

Approved: ____ Disapproved: ____ Approved with Conditions ____

Phone Response ____ Fax Response ____ No Response ____

Department Comments/Conditions _____

Department Approval _____
Department Representative Title Date

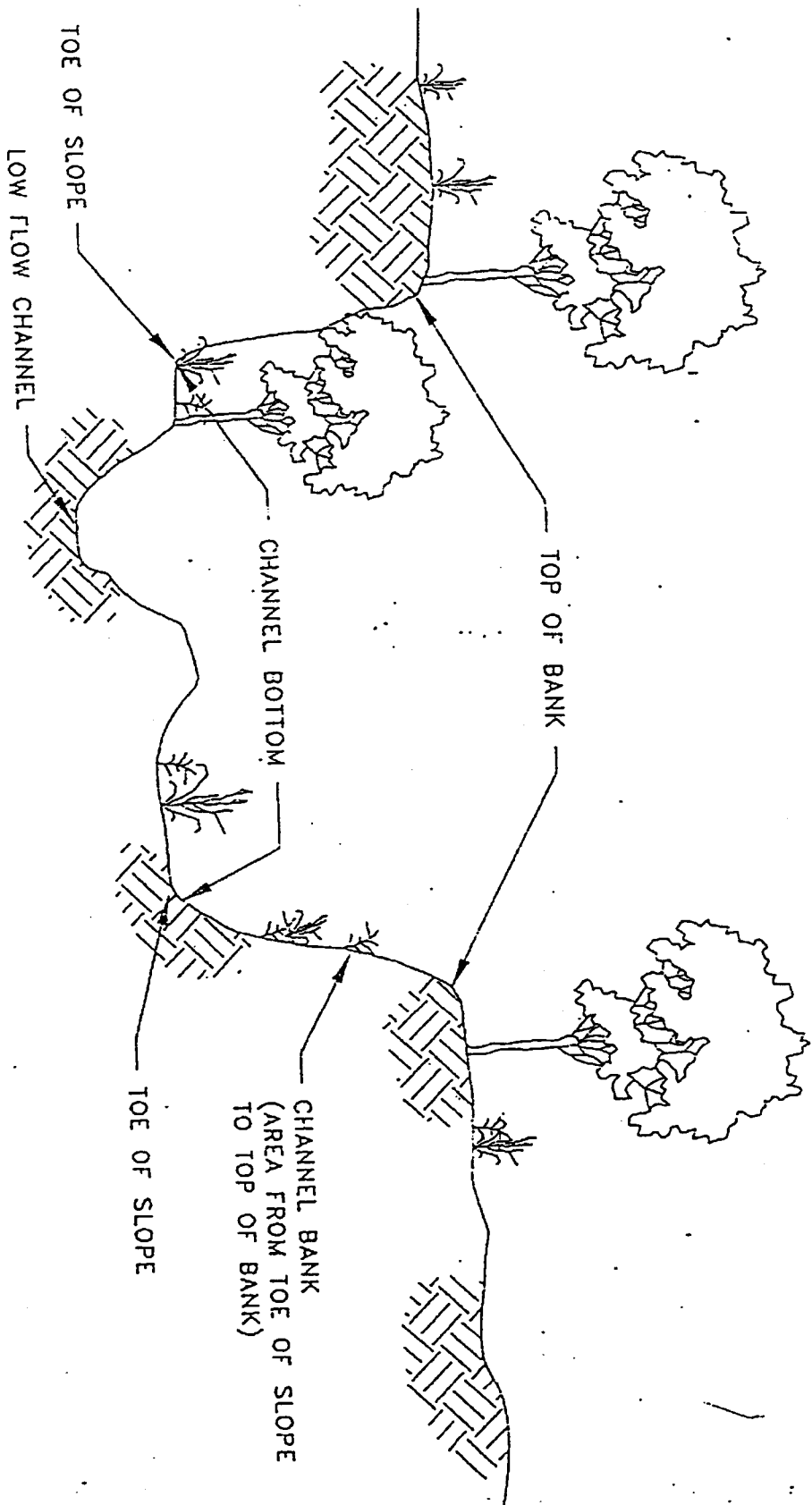
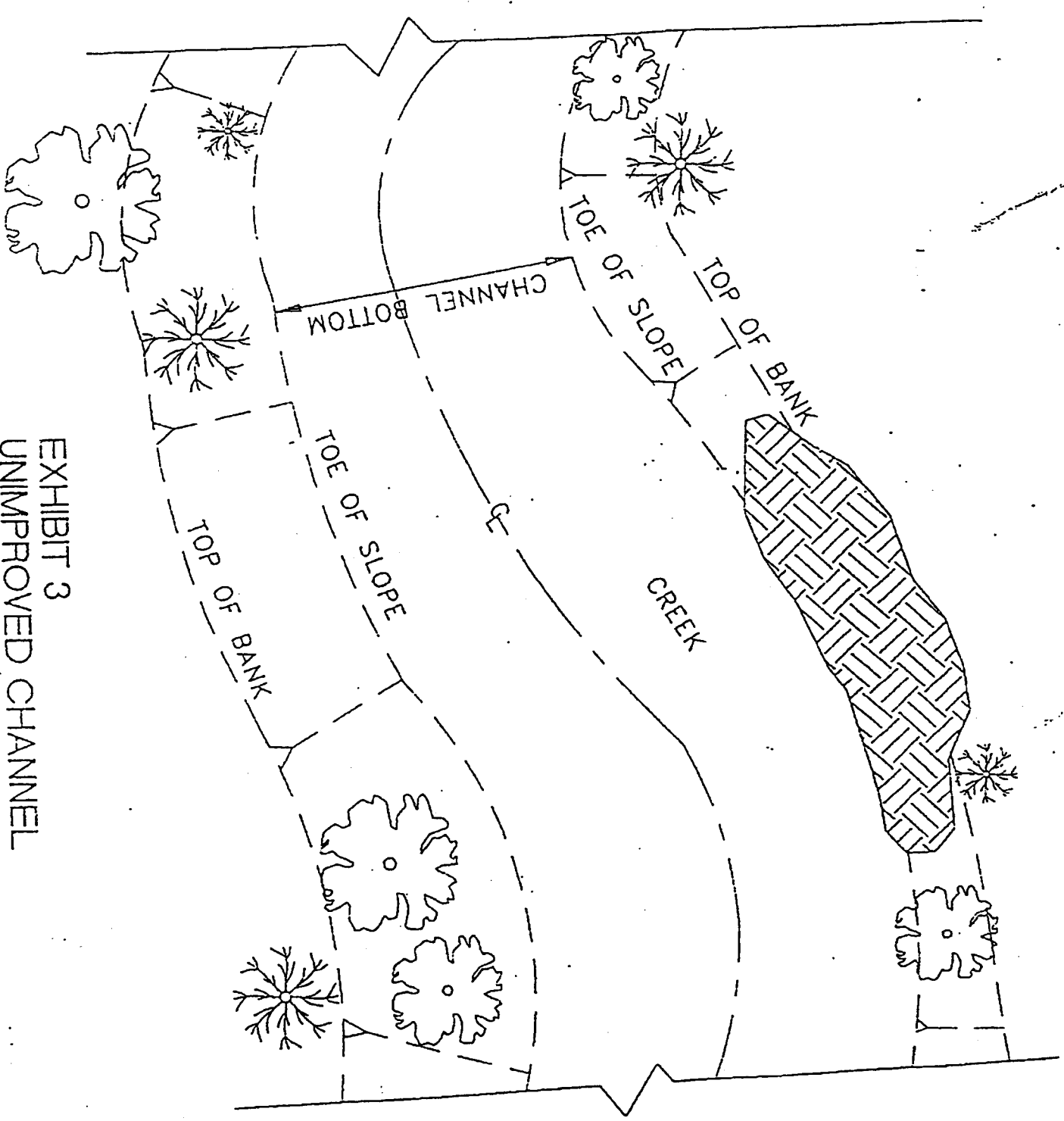


EXHIBIT 2
UNIMPROVED CHANNEL
DEFINITIONS
CHANNEL BANK, BOTTOM, LOW FLOW CHANNEL ETC.

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EXHIBIT 3
UNIMPROVED CHANNEL
DEFINITIONS



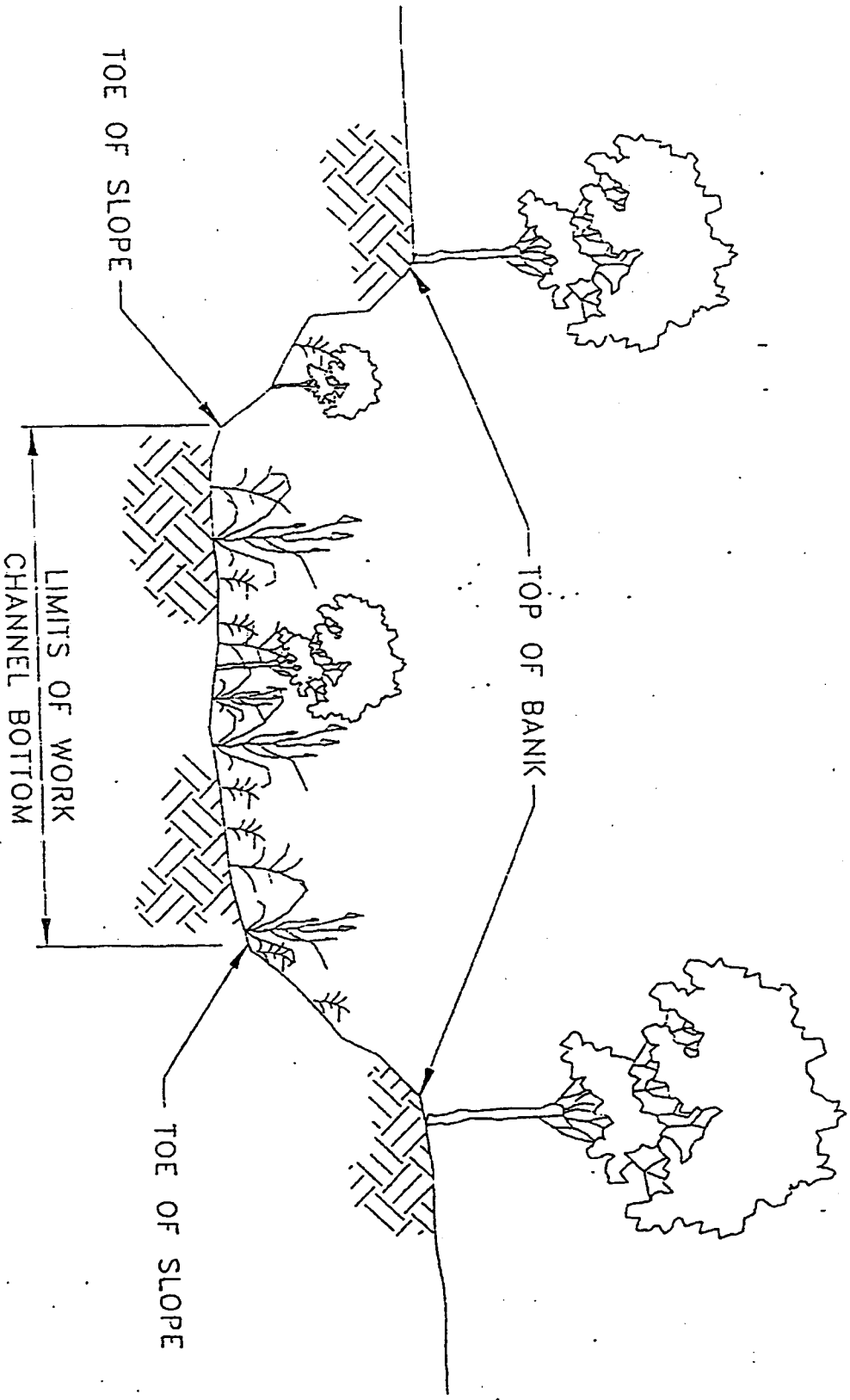


EXHIBIT 4
CONTROL OF AQUATIC
AND WOODY GROWTH

Sm

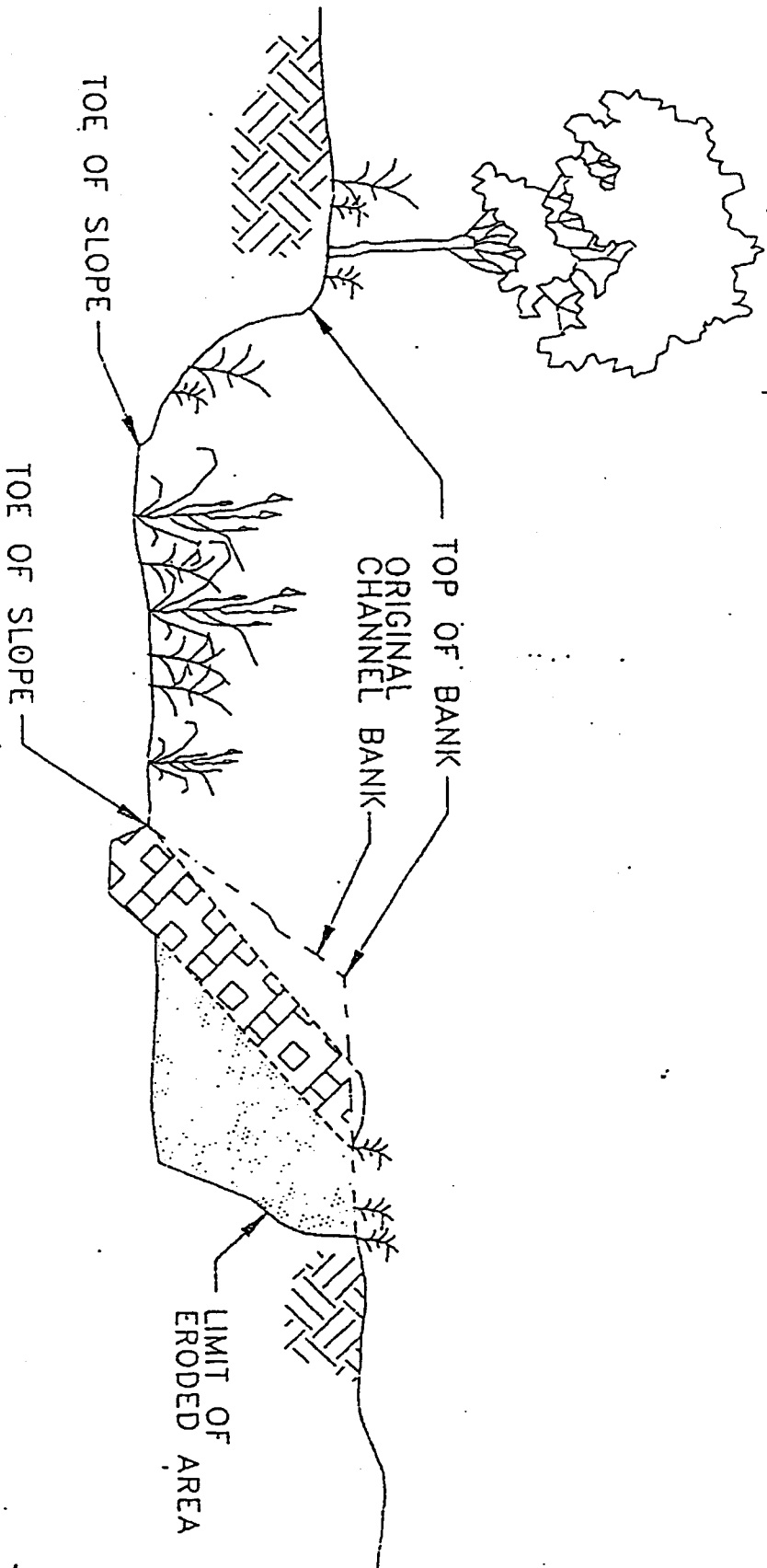


EXHIBIT 6
MINOR EROSION CONTROL WORK

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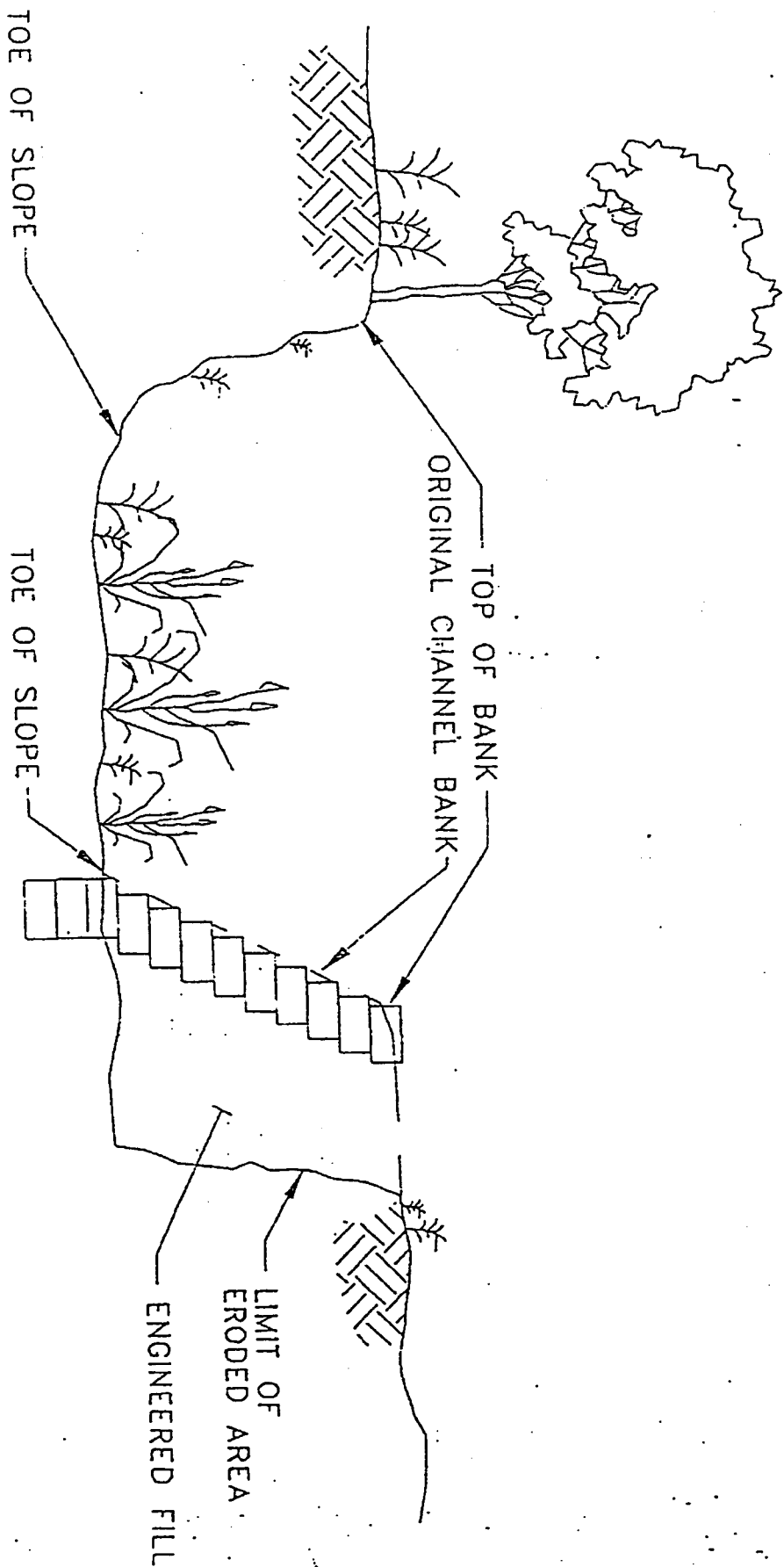


EXHIBIT 7
MINOR EROSION CONTROL WORK

